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SECURITY COUNCIL
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Identical letters dated 31 January 2000 from the Secretary-General to the President of the General Assembly, the President of the Security Council and the Chairperson of the Commission on Human Rights

I have the honour to transmit to you herewith the letter dated 26 January 2000 addressed to me by the Minister for Foreign Affairs of the Republic of Indonesia concerning the report of the International Commission of Inquiry on East Timor (see annex).

(Signed) Kofi A. ANNAN

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Annex

Letter dated 26 January 2000 from the Minister for Foreign Affairs of Indonesia to the Secretary-General

I wish to thank you for the advance copy of the report of the International Commission of Inquiry on East Timor, which I received through our Permanent Representative in New York. We have duly noted the contents of the report.

As you are aware, we have rejected the resolution adopted by the United Nations Commission on Human Rights at its special session, which established an international commission of inquiry on East Timor to gather and compile systematically information on possible violations of human rights in East Timor. The members of the Commission on Human Rights, as reflected in the vote on resolution 1999/S-4/1 on 27 September 1999, were quite divided on the issue for a variety of reasons, prominent among which was the widespread sense of regret over procedural irregularities surrounding the convening of that special session. As you may recall, the position of Indonesia on this procedural issue as well as on the substance of the resolution was fully supported by Asian countries and some other countries. The establishment of the International Commission therefore does not command the full support of the international community.

In spite of the fact that Indonesia rejected the resolution of the special session, the Indonesian Government, faithful to its long-standing commitment to cooperate with the Commission on Human Rights and its mechanisms, had approved the visit of the International Commission to Indonesia from 5 to 8 December 1999. Having rejected the resolution, however, Indonesia, morally and legally, is bound neither by the resolution nor by the conclusions and recommendations of the International Commission. Consequently, we are in no position to make substantive comments on its report. Nevertheless, in the spirit of our cooperation with you, we will make a few general observations.

From a cursory review of the report of the International Commission, we cannot help but notice that the report seems to consist of sweeping, uncorroborated allegations and is one-sided and selective in approach. In citing instances of human rights violations, the report concentrates on violations alleged to have been perpetrated by pro-integration groups without bothering to cross-check with testimonies given by individuals belonging to pro-integration groups. Strangely, only one paragraph in the report addresses the violations of human rights by pro-independence groups and dismisses them as "allegations", "fewer in number" and "without confirmation". This clearly shows the bias of the Commission.

It is public knowledge that the long-standing conflict among East Timorese has worsened since a special status with wide-ranging autonomy was offered to them in June 1998. As a result, human rights violations in East Timor have been committed by both sides since then and escalated in the aftermath of the popular consultation. The pro-integration groups also suffered many violations of their human rights. The Indonesian Government consistently reported these violations of human rights perpetrated by the pro-independence group against the

pro-integrationists and other East Timorese who refused to support them. It is worth noting that the Indonesian Government on 24 November 1998 submitted information to Ambassador Jamsheed Marker, the Personal Representative of the Secretary-General for East Timor, concerning an intensified campaign of terror and intimidation and incidents of armed attacks and other violent acts perpetrated by the pro-independence groups and armed separatist groups in East Timor against civilian and military personnel. This campaign of terror and intimidation continued and escalated even after January 1999. These constitute a very crucial aspect of the events in East Timor at that time. Unfortunately, to the disappointment of my Government, the International Commission has not shown any interest in these facts. Such lack of interest has not only damaged the cause of fairness and objectivity, without which justice cannot be served, but has also strengthened the position of those who argue that the work of the International Commission is highly politicized.

As you may be aware, the Government of Indonesia has been greatly appalled by the reports of human rights violations and destruction of property in East Timor in the aftermath of the announcement of the results of the popular consultation. The national interest of Indonesia required the maintenance of a stable and peaceful environment in East Timor whatever the outcome of the popular consultation. It was, after all, the responsibility of Indonesia to maintain law and order in East Timor, as provided for in the Agreement between Indonesia and Portugal of 5 May 1999.

The Indonesian Government therefore regrets that acts of violence and destruction happened despite its good intentions and best efforts in trying to solve the East Timor question in a peaceful and democratic manner. The Government of Indonesia has on many occasions expressed its strong condemnation of reported human rights violations and any other acts of violence and destruction that occurred prior to and in the aftermath of the popular consultation. Twice the Government of Indonesia sent a delegation of Ministers led by the Coordinating Minister for Political and Security Affairs, Minister Feisal Tanjung, to East Timor in an effort to restore peace and order. General Wiranto, who was then the Commander of the Tentara Nasional Indonesia (TNI) (Indonesian armed forces), went to East Timor after the announcement of the result of the popular consultation for the same purpose. It is therefore evident that the Indonesian Government, the Indonesian Police and TNI have exerted utmost efforts to quell the violence and destruction during the process of consultation and its aftermath. As the Supreme Commander of TNI, President Habibie himself issued instructions to the Indonesian Police and TNI to move decisively to stop the killings and destruction. When the police and TNI were unable to quell the escalating violence and destruction, the Indonesian Government imposed a state of military emergency in East Timor on 7 September 1999. While the imposition of a state of military emergency in East Timor has stopped the killings, still destruction of property could not be completely suppressed. Having assessed the situation, the Indonesian Government on 12 September 1999 decided to invite the United Nations to send a United Nations peacekeeping force to East Timor.

The foregoing clearly indicates the policy and determination of the Indonesian Government, the Indonesian Police and TNI to address the acts of violence and destruction in East Timor. It is therefore unfair that the

International Commission in its report should make sweeping accusations against the Indonesian army as being responsible for the "intimidation, terror, killings and other acts of violence experienced by the people of East Timor". Equally unjustified is its allegation that the Indonesian Police have been involved "in acts of intimidation and terror and having been inactive in preventing these acts". It is quite possible that certain individual personnel of the Indonesian Police and TNI have committed acts of violence and destruction in contravention of the policy of the Indonesian Government, the Indonesian Police and TNI. In such cases, the Indonesian Government is determined to bring these individuals to justice through the national judicial mechanism. But certainly, the accusation of the International Commission that the Indonesian Police and TNI as institutions were involved in the violation of human rights in East Timor is totally false and baseless.

I wish to clearly state that it is the firm position of the Indonesian Government that the recommendations of the International Commission to establish an international human rights tribunal is totally unacceptable for the following reasons:

(a) The alleged violations of human rights referred to in the report of the International Commission were committed in East Timor when it was still an integral part of the territory of the Republic of Indonesia. For this reason alone, Indonesian laws are the only laws applicable to those violations and the Indonesian judicial mechanism is the exclusive mechanism for bringing the perpetrators of the violations of human rights to justice;

(b) The national judicial mechanism of the Republic of Indonesia is functioning and capable of dispensing justice - in contrast with the case of the International Criminal Tribunals established for the former Yugoslavia and Rwanda;

(c) It is necessary that the international community should respect the principle of exhaustion of national remedies, a principle of international law that is consistently upheld;

(d) The degree and extent of the alleged violations of human rights as cited in the report of the International Commission do not justify the establishment of an international human rights tribunal;

(e) The establishment of an international human rights tribunal will only create obstacles to the realization of the commitment of the leaders of Indonesia and Timor Lorosae to promote friendly relations between the two countries and reconciliation between their peoples, and thereby contribute to the peace and stability of the region.

The Indonesian Government therefore considers it imperative that reports of violations of human rights be investigated thoroughly, fairly and objectively in order to identify the perpetrators and bring them to justice. In this regard, the Government of Indonesia welcomes the establishment by the National Commission on Human Rights (Komnas HAM) of the National Commission of Inquiry on Human Rights Violations in East Timor (KPP-HAM), which has carried out very extensive work. KPP-HAM has sent a fact-finding mission to East Timor. The

fact-finding mission has interviewed numerous witnesses to the alleged acts of violence and destruction in East Timor, in addition, it has also interviewed various personalities in Jakarta who are knowledgeable on the situation in East Timor. It is also a fact that KPP-HAM has extended its cooperation to the International Commission and has invited participation of international experts in its inquiry. The day-to-day activities of KPP-HAM are extensively reported by the Indonesian and international media. The Indonesian Government places utmost confidence in the independence, credibility and competence of the members of the Commission in accomplishing their important mission.

The National Commission of Inquiry (KPP-HAM) is expected to submit a report on its findings and recommendations to the Komnas HAM at the end of January 2000; Kamnas HAM will then transmit the report to the Attorney General. The Attorney General will carefully study the findings and recommendations of the Commission and decide what legal action to take through the existing national judicial mechanism. As has been made clear in various national forums, the Indonesian people will closely watch the course of actions that the national judicial mechanism will take to bring all perpetrators of the violations of human rights in East Timor to justice. For this purpose, TNI and the Police are committed to support the judicial process.

Indonesia's efforts to address the problem of human rights violations in East Timor through its national judicial mechanism should be viewed from a wider perspective, especially in the light of the commitment of the new Government under the leadership of President Abdurrahman Wahid to promote democracy, good governance and respect for human rights and fundamental freedoms.

My Government is confident that you will have the wisdom and foresight to consider the findings and recommendations of the National Commission of Inquiry (KPP-HAM) and to allow the national judicial process to take its own course.

(Signed) Dr. Alwi SHIHAB